

The Assistant Director averaged claimant's 49 percent wage loss and 53 percent task loss and found he had a 51 percent permanent partial general disability as the result of a January 23, 1994, accident. The Assistant Director also found the respondent and its insurance carrier could recover from the Workers Compensation Fund a \$6,215.25 overpayment of temporary total disability benefits.

The respondent and its insurance carrier appealed and contend claimant could return to work and earn 90 percent of his pre-injury average weekly wage and that he is trying to manipulate his award.

The only issues before the Appeals Board on this review are:

- (1) What is the nature and extent of claimant's injury and disability?
- (2) Should the temporary total disability benefit overpayment be reimbursed from the Workers Compensation Fund or credited against the award?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

The Appeals Board adopts the findings and conclusions set forth by the Assistant Director in the Award. Therefore, the Appeals Board also concludes that claimant's permanent partial general disability is 51 percent as the result of the injuries he sustained on January 23, 1994.

The Appeals Board, however, finds the Assistant Director erred by finding that the Workers Compensation Fund should reimburse the respondent and its insurance carrier for the overpayment of \$6,215.25 in temporary total disability benefits. Rather, the respondent and its insurance carrier are entitled to credit that amount against the amount due in this Award under K.S.A. 44-525(b), which provides:

(b) No award shall be or provide for payment of compensation in a lump sum, except as to such portion of the compensation as shall be found to be due and unpaid at the time of the award, or except at the discretion of the director on settlement agreements, and credit shall be given to the employer in such award for any amount or amounts paid by the employer to the employee as compensation prior to the date of the award.

Based upon the above, the Award should be modified to allow the respondent and its insurance carrier a credit against the award for the temporary total disability overpayment.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated December 12, 1997, entered by Assistant Director Brad E. Avery is modified in the manner set forth above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stephen J. Jones, Wichita, KS  
Gary A. Winfrey, Wichita, KS  
Brad E. Avery, Assistant Director  
Philip S. Harness, Director